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777 Ethnic Dining Concept Corp. and Arpit Patel.
Case 28–CA–236521

October 25, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent, 777 Ethnic Dining Concept Corp., has failed to file an answer to the complaint. Upon a charge and amended charge filed by Arpit Patel on February 20, and June 12, 2019, respectively, the General Counsel issued a complaint and notice of hearing on June 25, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although it was properly served with copies of the charges and the complaint, the Respondent failed to file an answer.

On July 29, 2019, the General Counsel filed a Motion for Default Judgment with the Board. On August 1, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days after the service of the complaint, unless good cause is shown. Moreover, the complaint affirmatively stated that unless an answer was received by July 9, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and electronic mail dated July 16, 2019, notified the Respondent that unless an answer was received by July 23, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Las Vegas, Nevada, and has been engaged in the business of operating a restaurant.

During the 12-month period ending on February 20, 2019, the Respondent, in conducting its operations, derived gross revenues in excess of \$500,000, and purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ritesh Patel	Owner
Harish Kanan	Kitchen Manager
Vishal Patel	Restaurant Manager

The following events occurred, giving rise to these proceedings.

1. In about mid-October 2018, the Respondent, by Ritesh Patel, at the Respondent's facility, directed employees not to discuss their wages with other people.

2(a) In about early November 2018, the Respondent, by Ritesh Patel, at the Respondent's facility, interrogated employees about their protected concerted activities.

(b) In about early November 2018 and about January 18, 2019, the Respondent's employee Arpit Patel engaged in concerted activities with other employees for the purposes of mutual aid or protection, by discussing wages and tips.

(c) About January 21, 2019, the Respondent discharged Arpit Patel.

(d) About January 21, 2019, the Respondent refused to provide Arpit Patel with the full amount of his wages owed.

3(a) The Respondent engaged in the conduct described above in paragraphs 2(c) and 2(d) because Arpit Patel engaged in the conduct described in paragraph 2(b), and to discourage employees from engaging in these or other concerted activities.

(b) The Respondent engaged in the conduct described above in paragraphs 2(c) and 2(d) because the Respondent believed Charging Party engaged in the conduct described

above in paragraph 2(b), and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by discharging Arpit Patel and refusing to provide him with the full amount of his wages owed because he engaged in protected concerted activities or because the Respondent believed that he engaged in protected concerted activities, we shall order the Respondent to reinstate Patel and make him whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Patel for search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to compensate Patel for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 28 allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Patel and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, 777 Ethnic Dining Concept Corp, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees they cannot talk about their wages with other people.

(b) Coercively interrogating employees about their protected concerted activities.

(c) Discharging or otherwise discriminating against employees because they engaged in protected concerted activities and to discourage other employees from engaging in these activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Arpit Patel full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Arpit Patel whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this Decision and Order.

(c) Compensate Arpit Patel for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Arpit Patel, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada copies of the attached

notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since mid-October, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 25, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT instruct you not to discuss your wages with other people.

WE WILL NOT coercively interrogate you about your protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activities and to discourage other employees from engaging in these activities.

WE WILL, within 14 days from the date of the Board's Order, offer Arpit Patel full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Arpit Patel whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest, and WE WILL also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Arpit Patel for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Arpit Patel, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

777 ETHNIC DINING CONCEPT CORP

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-236521> or by using the QR code below. Alternatively, you can obtain a copy of

the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

